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6/18/81

JUDICIAL SELECTION CRITERIA

The President's criteria for federal judicial appointments is well established: excellence, competence and judicial temperament. As he has often stated, in filling these more important positions he will not seek only candidates who necessarily agree on every position, but rather who share one key view: The role of the courts is to interpret the law, not to enact new law by judicial fiat. With these conditions, he will be seeking candidates from all segments of the public.

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

June 23, 1981

MEMORANDUM FOR FRED F. FIELDING

FROM: HERBERT E. ELLINGWOOD

RE: Attached

This is a first run at sifting and listing criteria for judicial selection.

I think it would be profitable to circulate this among our staff for their comments.

CONSIDERATIONS FOR JUDICIAL APPOINTMENT TO THE SUPREME COURT

Work Capacity

Age
Length of anticipated service on court
Health
Diligence/Industriousness
Ability to make a decision
Promptness in rendering decisions or completing legal work
Craftsmanship
Administrative Ability
Ability to live and carry out the obligations to a family on a judicial salary
Sobriety

Interpersonal Relationships

Obvious Judicial Demeanor
Ability to function effectively in a collegial decisionmaking context
Attentive
Calmness under pressure
Courteous/Considerate
Openminded/Willingness to learn
Sense of Humor
Sensitivity to differences in others

Character

Mature
Dignified
Has integrity
Exhibits moral conduct; has high personal and professional ethics
Is fairminded and free from prejudice
Has good personal habits
Patient
Courageous
Not unduly affected by criticism or adverse comments
Unlikely to be influenced by partisan demands, public clamor or considerations of personal popularity or notoriety
Independent
Statesman
Favors traditional values

Professional Background

Prior Occupations
Educational Achievements
Reputation
- personal
- professional
- community
Unquestioned Legal Ability
Distinguished Legal Experience
Prior Trial Experience
Knowledge of the Appellate Process
Prior Judicial Experience
- trial court
- appellate court
-- quality of opinions
-- frequency of dissenting opinions
- Frequency of Reversal on appeal
- Number of cases handled over a period of time
- Type of cases handled
- Sentence Data
- Disparity of sentencing as compared to other judges of the same court and in the same court system
Broad Knowledge
- government
- history
- human freedom
- economics
- technology
Writings other than Judicial Opinions
Civic and Community Activities

Special Questions to be asked

Will this person be an obviously good choice?
Does he/she have a great potential for judicial leadership?
How has this person exercised judicial restraint in the past?
Is there a commitment to being an interpreter, rather than a creator of the law?
What does this person believe are the most important issues before the court?
And, what will be the most important issues before the court in 5 years?
What experience does this person have with those social issues?
Is this person strongly convinced of his/her own philosophy? Will they likely be unduly swayed by liberal, academic, media, peer or other pressures?
Is this person able to sever relationships (business/social/political/other) so that there will be no appearance of a conflict of interest?
Is this person dedicated to making the legal system work?
Has any tendency been exhibited which would indicate possible abuse of the office?
Are there any disqualifying factors, controversial items or potential problems with this candidate?

BORK, ROBERT HERON, b. March 1, 1927; J.D. U. Chgo. 1953; asso., firm Wilkie, Owen, Farr, Gallagher & Walton, N.Y.C. 1954-55; also partner firm Kirkland, Ellis, Hodson, Chaffetz & Masters, Chgo. 1955-62; Solicitor General, U.S. Department of Justice, Washington, 1973-77; acting Attorney General, U.S. 1973-74; Alexander M. Bickel prof. public law, Yale, 1979-__; served with USMCR 1945-46, 50-52.

CLARK, WILLIAM PATRICK, b. October 23, 1931; ed. Stanford U. 1949-51, Loyola U. Law School, Los Angeles, 1955; sr. partner firm Clark, Cole & Fairfield 1958-66; chief of staff, Gov. Ronald Reagan, justice Ct. of Appeals, Los Angeles, 1971-73, Supreme Ct. Calif., San Francisco, 1973-81; U.S. Army, 1951-53; Roman Catholic.

KEARSE, AMALYA LYLE, b. June 11, 1937; B.A. Wellesley Coll. 1959; J.D. cum laude U. Mich, 1962; firm Hughes, Hubbard & Reed, N.Y.C. 1962-79, partner 1969-79; Judge U.S. Ct. of Appeals, 2d Circuit, 1979-__; mem. bd. dirs. NAACP Legal Def. and Endl. Fund, 1977-79; mem. Pres.'s Com. on Selection of Fed. Jud. Officers, 1977-78; mem. Lawyers Comm. for Civil Rights Under Law.

KENNEDY, CORNELIA GROEFSEMA, b. August 4, 1923; B.A. U. Mich. 1945, J.D. 1947; law clk. Justice Harold M. Stephens, U.S. Ct. of Appeals, Washington, 1947-48; partner, Markle & Markle, Detroit 1952-66; judge 3d judicial circuit of Mich. 1967-70; Chief Judge U.S. Dist. Ct., Eastern Dist. Mich, Detroit, 1970-__; Phi Beta Kappa.

KLEIN, JOAN DEMPSEY; b. August 18, 1924; Judge, Superior Court of California Los Angeles County, appointed by Gov. Edmund G. Brown, Sr., 1963; Elected 1974, Presiding Judge 1974; Stepdaughters (3); Educated at California State University at San Diego (formerly San Diego State College) A.B. 1947 and University of California at Los Angeles, LL.B. 1955; Deputy Attorney General 1955-63; Member California Council on Criminal Justice 1970-74; Conference of California Judges (Vice Chairperson, Committee on Economy and Efficiency); California Women Lawyers (President 1975); Delegate to National Advisory Commission on Criminal Justice Standards and Goals 1973; received Municipal Court Judge of the Year Award from the California Trial Lawyers Association 1973; Professional Achievement Award from UCLA Alumni Association 1975; Alumna of the Year by UCLA Law Schol 1963; Woman of the Year by Los Angeles Times 1975.

KURLAND, PHILIP B.; b. October 22, 1921; B.A. U. Pa., 1942; LL.B. Harvard, 1944, LL.D. U. Notre Dame, 1977; law sec. to Judge Jerome N. Frank, 1944-45; clk to Supreme Ct. Justice Felix Frankfurter, 1945-46; atty. Dept. Justice, 1946-47; mem. firm Kurland & Wolfson, N.Y.C. 1947-50; asst. prof. law Northwestern U. Law Schl., 1950-53; mem. faculty U. Chigo. 1953-___; prof. law 1956-___; counsel firm Rothschild, Barry & Myers, Chigo., 1972-___; chief cons, subcom. on separation of powers U.S. Senate Judiciary Com., 1967-77; Author or editor: Jurisdiction of Supreme Court of U.S. 1950; Mr. Justice 1964; Religion and the Law 1962; Frankfurter: Or Law and Life, 1965; The Supreme Court and the Constitution, 1965; The Great Charter, 1965; Moore's Manual, 1964-70; Felix Frankfurter on the Supreme Court, 1970; Politics, the Constitution and the Warren Court, 1970; Mr. Justice Frankfurter and the Constitution, 1971; Landmark Briefs and Arguments of the Supreme Court of the United States, 110 vols., 1975-79; Watergate and the Constitution, 1978; Editor: Supreme Court Rev., 1960-___.

LAXALT, PAUL; b. August 2, 1922; B.S., LL.B. Denver U., 1949; Ddist. Atty. Ormsby County, 1951-54; Lt. Gov. Nev., 1963-66, Gov. Nev., 1966-70, sr. partner Laxalt, Berry & Allison, Carson City, 1970-74; U.S. Senator 1975-___.

MULLIGAN, WILLIAM HUGHES; b. March 5, 1918; A.B. cum laude, Fordham U. 1939, LLB cum laude, 1942, LL.D. 1975; asso. then partner firm Manning, Hollinger & Shea, N.Y.C. 1948-54; prof. law Fordham U. Law Schl. 1946-71, asst. dean prof. law 1954-56, dean, Fordham U. Law Sch. 1956-71; judge U.S. Ct. Appeals, 2d Circuit 1971-___; Fordham Law Alumni medal, 1971; served with U.S. Army, as spl. agt. CIC, 1942-46; Roman Catholic.

OAKS, DALLIN HARRIS; b. August 12, 1932; B.A., high honors, Brigham Young U. 1954; J.D. cum laude U. Chigo., 1957; law clk. to Supreme Ct. Chief Justice Earl Warren, 1957-58; with firm Kirkland, Ellis, Hodson, Chaffetz & Masters, Chigo., 1958-61; mem. faculty U. Chigo. Law Sch., 1961-71; asso. dean and acting dean, 1962, prof., 1964-71; Pres. Brigham Young U., Provo, Utah, 1971-___; also prof. law J. Reuben Clark Law Sch. 1974-___; mem. adv. com. Nat. Inst. Law Enforcement and Criminal Justice, 1974-76; mem., chrnm pro-tem, bd. dirs. Pub. Broadcasting Service, 1977-___; Order Coif., member, Ch. of Jesus Christ of Latter-day Saints. Author (with W. Lehman) A Criminal Justice System and the Indigent, 1968; the Criminal Justice Act in the Federal District Courts, 1969; Editor: The Wall Between Church and State, 1963.

O'CONNOR, SANDRA DAY; b. March 26, 1930; judge, Superior Court of Arizona Maricopa County, elected at general election, Nov. 1974; B.A., magna cum laude, Stanford, 1950, LL.B. 1952; Board of Editors Stanford Law Review; Member Order of the Coif; asst. atty. gen., Ariz. 1965-69; Ariz. State Senator 1969-75; trustee, Stanford U., 1976-__ ; Member, Advisory Board, Salvation Army; dir., 1st Nat. Bank, Ariz.

PYE, AUGUST KENNETH: b. August 21, 1931; B.A. U. Buffalo 1951; J.D. Georgetown U. 1953, LL.M. 1955, LL.D. 1978; prof. law Georgetown U. Law Center 1955-56, asso. dean, 1961-66; prof. law Duke, 1966-__ ; dean Duke Law Sch. 1968-70, 73-76, chancellor, 1970-71, 76-__, univ. counsel, 1971-73. Mem. Assn. Am. Law Schs. (pres. 1976-77); served with U.S. Army, 1953-55; Phi Beta Kappa.

ROGERS, WILLIAM PIERCE; b. June 23, 1913; A.B. Colgate U., 1934; LL.B. Cornell, 1937; Mem. editorial bd. Cornell Law Quar., 1935-37; asst. dist. atty, N.Y. county, 1938-42, 46-47; counsel, U.S. Senate War Investigating Com. 1947, chief counsel, 1947-48; dep. atty gen., U.S. 1953-58, atty. gen. 1958-61; U.S. Sec. State, 1969-73; now sr. partner firm Rogers & Wells, N.Y.C.; mem. Pres. Commn Law Enforcement and Adminstrn., 1965-67. Served to lt. cmdr., USN 1942-46; mem. Order of Coif.

SHARP, SUSIE MARSHALL; b. July 7, 1907; U. North Carolina (formerly North Carolina College for Women) 1924-26, LL.B. 1929; in legal practice at Reidsville 1928-49, First woman in North Carolina to serve as City Attorney (Reidsville, 1939-49); Chief Justice, North Carolina Supreme Court (Appointed Associate Justice by Governor Terry Sanford March 14, 1962. Elected Chief Justice at general election Nov. 5, 1974; Board of Editors North Carolina Law Review; mem. Order of the Coif; Special Award for Outstanding Legal Achievement from N.Y. Women's Bar Assn. 1976 and Distinguished Alumnus Award from U. North Carolina at Chapel Hill 1977; Democrat.

SNEED, JOSEPH TYREE; b. July 21, 1920; B.B.A. Southwestern U, 1941, LL.D. 1968; LL.B. U. Tex., Austin, 1947; S.J.D., Harvard, 1958; instr. bus. law U. Tex., Austin, 1947, asst. prof. law 1947-51, asso. prof. 1951-54, prof. 1954-57; asst. dean, 1949-50; prof. law Cornell U. Law Sch. 1957-62; Stanford Law Sch. 1962-71; dean, prof. law Duke Law Sch. 1971-73; dep. atty. gen., Dept. Justice, Washington, 1973; judge U.S. 9th Circuit Ct. Appeals, San Francisco, 1973-__; mem. Calif. Law Revision Commn., 1970, adv. com. Nat. Inst. Law Enforcement and Criminal Justice, 1974-75; mem. Order of the Coif; Served with USAAF 1942-46.

WALLACE, J. CLIFFORD; b. December 11, 1928; B.A. San Diego State U. 1952 with honors; LL.B. U. Calif at Berkeley 1955 with honors; with firm Gray, Cary, Ames & Frye, San Diego 1955-70; U.S. judge for So. Dist. Calif, 1970-72; U.S. judge 9th Circuit, Calif, 1972-; Served with USN 1946-49; Mormon.

WEBSTER, WILLIAM HEDGCOCK; b. March 6, 1924; A.B. Amherst Coll. 1947; LL.D. 1975; J.D. Washington U. 1949; LL.D. 1978; with firm Armstrong, Teasdale, Kramer and Vaughan, St. Louis, 1949-50, 52-59, partner 56-59, 61-70; U.S. atty. Eastern Dist. Mo., 1960-61; judge, U.S. Dist. Ct., Eastern dist. Mo. 1971-73; U.S. Ct. of Appeals, 8th Circuit, 1973-78; dir., FBI, 1978-; Mem. adv. com. on criminal rules, 1971-78; Served as Lt. (JG) USNR 1943-46, lt. (SG) 1951-52; mem. Order of the Coif.

WILKEY, MALCOLM RICHARD; b. December 6, 1918; A.B. Harvard 1940, LL.B. 1948; partner firm Butler, Binion, Rice & Cook, Houston 1948-54, 61-63; U.S. atty. So. Dist. Tex, 1954-58; asst. atty gen, U.S. 1958-61; sec., asso. gen. counsel Kennecott Copper Corp. 1963-67; gen. counsel, sec. 1967-70; judge U.S. Ct. Appeals, D.C. Circuit, 1970-; Delegate, Republican Nat. Convention 1960; served from 2d lt. to lt. col. U.S. Army, 1941-45; Phi Beta Kappa.

WINTER, RALPH KARL, JR.; b. July 30, 1935; ed. Yale, B.A. 1957, LL.B. Yale 1960; Orifessor, research assoc. and lect., 1962-64; Asst. prof. to assoc. prof. 1964-68; Prof. law, Yale, 1968-; special consult. to subcomm. on separation of powers, U.S. Senate Judiciary Comm., 1968-; Sr. fellow, Brookings, 1968-; research in law of evidence, economics of labor law, public employee unionism; Author: Collective Bargaining and Competition, Application of Antitrust Standards to Union Activities, Improving Economic Status of Negroes through Laws, Against Discrimination: A Reply to Professor Sovern.

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

The President has seen _____

June 22, 1981

MEMORANDUM FOR: The President

FROM: Lyn Nofziger

I think it is imperative that you appoint a woman to the Supreme Court.

1. It means you will live up to a commitment you made and have that behind you.
2. It will go a long way towards solving the problem we have with the lack of women in this Administration in high places.
3. It will take off of your back the impression, however unjustified, that you and your senior staffers are anti-women.
4. It would be a very good political move. It will strengthen our base among women and probably among men also.

I believe there is a strong feeling in this country that a woman deserves a chance to serve on the Supreme Court. I think also that if you do not appoint a woman you will be perceived to have reneged on your promise and that will hurt you in the Congress if your effort to get your legislative package passed and will certainly hurt you in the polls and, all in all, will have a strong negative effect that will hurt your overall standing and your overall ability to get your legislative program through the Congress.

I think it will also hurt our chances to pick up seats in the next election - - especially if another vacancy does not occur before then.

One more thing - - it's the right thing to do.

cc: Jim Baker
Mike Deaver
Dave Gergen
Ed Meese

C.F.

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EXECUTIVE DIRECTOR

Carol S. Silverthorn

June 18, 1981

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

Last October, you pledged to the American people that you would appoint a woman to the United States Supreme Court. With the resignation of Justice Potter Stewart, we urge you to fulfill that promise now.

A woman serving on the highest court in our land is a fundamental step toward achieving true and equal justice in this country. Such an appointment is long overdue. There are scores of highly qualified women lawyers and jurists who would make an outstanding contribution to the work of the U.S. Supreme Court. Over 45,000 women are practicing law in the United States. There are more than 700 women judges on courts of record. Of these, 44 women serve on the federal bench, and a dozen women judges are on the highest state courts. In addition, there are hundreds of prominent women partners in law firms, corporate executives, government officials and law professors from whom to choose.

Examples of the many women well qualified to serve are: Justice Shirley Abrahamson, Wisconsin Supreme Court; Elizabeth Hanford Dole, Special Assistant to the President; Judge Rita C. Davidson, Maryland Court of Appeals; Judge Ruth Bader Ginsburg, U.S. Court of Appeals for the District of Columbia Circuit; Carla Anderson Hills, partner, Latham, Watkins & Hills; Shirley Hufstedler, former judge of the U.S. Court of Appeals for the 9th Circuit; Judge Amalya Kearse, U.S. Court of Appeals for the 2nd Circuit; Justice Joan Dempsey Klein, California Court of Appeals and president of the National Association of Women Judges; Jewel Lafontant, former Solicitor General; Betty Southard Murphy, partner, Baker & Hostetler and former chairman of the National Labor Relations Board; Judge Dorothy Nelson, U.S. Court of Appeals for the 9th Circuit and former dean of the University of Southern California Law School; Justice Rosalie Wahl, Minnesota Supreme Court; and others.

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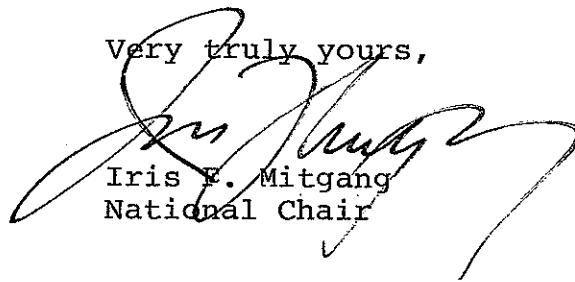
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The President
June 18, 1981
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This list is merely illustrative of the many fine jurists and legal scholars who are women. We will continue to send you names of highly qualified women for your consideration.

We share your commitment to the highest standards of excellence for our nation's judicial system. Among the many women who meet these standards, we know that you will find the one who will enable you to make this historic nomination. In doing so, not only will you be fulfilling your pledge to the American people, but also, you will have begun to rectify the great imbalance on our nation's highest court.

Very truly yours,



Iris F. Mitgang
National Chair

IFM/sn